

Claimant initially learned of possible employment with respondent, Topeka Machinery, when he was contacted by his brother-in-law, David Daffan. Mr. Daffan was at that time a foreman for respondent. The initial contact occurred by phone. Mr. Daffan lived in Texas and claimant lived in Kentucky. The potential job was in West Virginia and

claimant did not recall whether Mr. Daffan contacted him from Mr. Daffan's home in Texas or, instead, from the job site in West Virginia. In either event, neither party to the conversation was in the state of Kansas.

Respondent argues that this initial phone call created the employment contract. The Appeals Board disagrees. As we view the evidence, it appears that the call from Mr. Daffan was to advise claimant of a probable employment and to suggest that Mr. Daffan come to the job site in West Virginia if he wished to secure such employment. Claimant did then travel to the job site in West Virginia. When he arrived, he was asked to fill out an application. Claimant's understanding was that this application was then faxed to Lester M. Green in Topeka, Kansas. It was also his understanding that Mr. Green would approve or disapprove the application. Mr. Daffan did then, in fact, come back to claimant and advised claimant that Mr. Green had approved the application and he was free to go to work.

A contract is considered made when and where the last act necessary for its formation is done. Neumer v. Yellow Freight System, Inc., 220 Kan. 607, 556 P.2d 202 (1976). The Administrative Law Judge found that the last act necessary was the approval by Mr. Green in Topeka. On that basis, he concluded Kansas does have jurisdiction. The Appeals Board agrees that approval by Mr. Green was necessary for the contract. But the Appeals Board considers the last act to be the communication by Mr. Daffan to the claimant advising claimant that the application had been approved. This act occurred at the job site in West Virginia. Accordingly, the contract was not entered in Kansas and Kansas does not have jurisdiction.

WHEREFORE, the Appeals Board finds that the preliminary hearing decision entered by Administrative Law Judge Robert H. Foerschler on May 6, 1998, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Brenden W. Webb, Overland Park, KS
Theresa A. Otto, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director